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402-191

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS & INTERFERENCES

Applicant: Frank Camaioni : Examiner: Alvin C. Chin-Shue
Serial No. 10/660,988 :
Filed: September 12, 2003 :
Title: ADD-ON EXTENSION LADDER :

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Mail Stop: Appeal Brief Patents

TRANSMITTAL OF REPLY BRIEF

Enclosed is Applicant's Reply Brief (in triplicate) filed in response to the Examiner's Answer, mailed on August 7, 2006.

Applicant previously filed a Reply Brief on June 26, 2006, in response to an Examiner's Answer mailed on May 16, 2006. Subsequent to the mailing of the earlier Examiner's Answer, the Board of Patent Appeals And Interferences issued an Order Returning Undocketed Appeal To Examiner, mailed on July 24, 2006. The Order requested the Examiner to list three (3) additional

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references in the section of the Examiner's Answer entitled "Evidence Relied Upon".

The Examiner's Answer mailed on August 7, 2006, to the best of Applicant's knowledge, is identical to the Examiner's Answer mailed on May 16, 2006, except that the later Examiner's Answer identifies the three references referred to in the Order dated July 24, 2006 in the section entitled "Evidence Relied Upon".

The enclosed Reply Brief is identical to the Reply Brief filed by Applicant on June 26, 2006, except that the first paragraph of the first page refers to the Examiner's Answer mailed on August 7, 2006, and not the earlier Examiner's Answer mailed on May 16, 2006.

Respectfully submitted,


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REPLY BRIEF

This Reply Brief is being filed in response to the Examiner's Answer mailed on August 7, 2006 in connection with the Appeal pending before the Patent & Trademark Office Board of Patent Appeals & Interferences.

The Examiner's Answer responds to the arguments advanced by Applicant in its Appeal Brief starting at Section 10 (last

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paragraph of page 7) of the Examiner's Answer.

With regard to the formal grounds of rejection of independent Claims 11 and 18 under 35 U.S.C. Section 112, second paragraph, these claims are each directed to "A ladder extension section adapted to be removably mounted to a conventional ladder, ...". The claims continue to define both the ladder extension, and its relationship to a conventional ladder to which the claimed ladder extension section is removably mountable. Applicant respectfully submits that it is necessary to refer to the conventional ladder in independent Claims 11 and 18 because the conventional ladder defines the operating environment and functional relationship of the claimed ladder extension section and a conventional ladder. Incidental recitation of the features of a conventional ladder in Claims 11 and 18 do not render the claims indefinite because they are necessary to properly define the claimed ladder extension. Applicant submits that persons skilled in the relevant art will understand the scope and content of independent Claims 11 and 18, and therefore these claims comply with 35 U.S.C. Section 112, second paragraph.

The Examiner's Answer further states that Applicant's arguments for patentability of Claims 11 and 18 are directed only to the combination of the ladder extension section with a conventional ladder, and therefore this constitutes evidence in support of the rejection of the claims under 35 U.S.C. Section 112, second paragraph. Applicant respectfully submits that the

arguments in support of the patentability of independent Claims 11 and 18 are, in fact, directed to the claimed ladder extension section. The reference to the conventional ladder, which is only inferentially recited in these claims, is necessary, since as noted above, the conventional ladder defines the operating environment of the claimed ladder extension section.

Turning now to the prior art rejections of independent Claims 11 and 18 as being anticipated by Brugner, the Examiner's Answer states that:

"...Brugner's extension 29 is "capable" of being attached to a conventional ladder having a width less than that of his extension thus satisfying the requirement of 35 U.S.C. 102(b), ...".

Applicant respectfully disagrees with this conclusion. As more fully discussed at page 10 of Applicant's Appeal Brief, the express disclosure of the Brugner patent is exactly opposite to that disclosed and claimed by Applicant. The Brugner patent discloses that the ladder section 29, which the Examiner states is the extension section, is slightly narrower than the ladder section 2 so that the extension section is between the sides of the ladder 2 and mounted to the ladder 2. Applicant respectfully submits that there is clearly no strict identity between the disclosure of the Brugner patent and that of Claims 11 and 18, and thus the rejection of Claims 11 and 18 as being anticipated by Brugner is improper.

Applicant notes that the Examiner's Answer, in discussing the rejection of Claims 11 and 18 as being anticipated by Brugner, refers to "Kennedy's Pat. 2,372,003". To the best of Applicant's knowledge, this patent has never been cited of record during the prosecution of the present patent application. Moreover, this patent has not been cited or applied in the final rejection to reject any of the pending claims on appeal. Therefore, Applicant submits that it is improper for this reference to be first cited and relied upon in the Examiner's Answer.

With regard to the rejection of independent Claims 11, 18 and 21 as being anticipated by the Lee publication, the Examiner's Answer states that this publication discloses an extension for a ladder designated by element 10. Applicant respectfully disagrees. For the reasons discussed more fully at page 11 of Applicant's Appeal Brief, element 10 of the Lee publication is an attachment to a ladder for stabilizing the ladder for preventing lateral sway of the ladder, and is not a ladder extension section nor is it intended to function as a ladder extension section. There is clearly no strict identity of invention between the attachment 10 of the Lee publication and the ladder extension sections defined by appealed independent Claims 11, 18 and 21, and therefore the rejection of these claims as being anticipated by the Lee publication is improper.

With regard to the rejection of independent Claim 21 as being anticipated by the Hulme et al patent, the Examiner's Answer states that Figure 7 "...teaches the claimed extension at 120 for extending a ladder 100...". Applicant respectfully disagrees with this conclusion. As more fully discussed at pages 11 - 12 of Applicant's Appeal Brief, the Hulme et al patent, except for the embodiment illustrated by Figure 9, teaches a ladder extension section which is narrower in width than the base section, exactly opposite to the arrangement defined by appealed independent Claim 21. In the embodiment of the invention illustrated by Figure 9, a narrower base section includes means for engaging the rungs of the wider extension section, exactly opposite to the express recitation in appealed independent Claim 21 that means are provided on the ladder extension section itself for engaging a rung on the conventional ladder. The Examiner's Answer does not address this limitation of Claim 21. Applicant submits that there is no strict identity of invention between the disclosure of Hulme et al and the combination ladder and ladder extension section defined by appealed independent Claim 21, and therefore the rejection of Claim 21 as being anticipated by Hulme et al is improper.

With regard to the rejection of independent Claim 21 as being anticipated by Edmunds, Applicant submits, as discussed at page 12 of Applicant's Appeal Brief, that Edmunds discloses a device for splicing two conventional ladders together, and does not disclose the combination ladder and ladder extension section

as defined by appealed independent Claim 21. Edmunds advocates the use of two full size conventional ladders spliced together, thereby defeating an intended objective of the device defined by independent Claim 21, which is to eliminate the need to carry two full size ladders, but instead enables a workman to carry a single conventional ladder together with a shorter ladder extension.

Although appealed independent Claim 21 expressly recites that the ladder and the ladder extension section are arranged such that the sidewalls of the ladder extension extend beyond the sidewalls of the ladder when the ladder extension section is mounted to the ladder, in the device disclosed by Edmunds, there is an area of overlap between the sidewalls of Section A and the sidewalls of Section B. Moreover, it appears from Figure 2 of Edmunds that the sidewalls of Section B are actually disposed on top of the sidewalls of Section A. This arrangement would defeat the intended objective of Applicant's combined ladder and ladder extension section, as expressly disclosed in the pending patent application, which is to prevent lateral movement of the extension section relative to the ladder to which the extension is mounted (See page 9 of Applicant's Appeal Brief).

Applicant respectfully submits that there is no strict identity of invention between the disclosure of the Edmunds patent and the combined ladder and ladder extension section as

specifically defined by appealed independent Claim 21, and therefore Claim 21 is not anticipated by Edmunds.

* * *

For the reasons discussed herein, in the Appeal Brief, and throughout the prosecution of this patent application, Applicant respectfully submits that appealed independent Claims 11, 18, and 21 are in condition for allowance over the prior art applied in the final action. The remaining dependent claims, which depend directly or indirectly from at least one of the appealed independent claims, are allowable at least for the same reasons as their respective parent independent claims.

Applicant respectfully requests that the final rejection of the claims be reversed, and that this patent application be allowed.

Respectfully submitted,



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